United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-2072

To be argued by
ARLENE R. SILVERMAN

Original

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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FRANCIS BLOETH,

Plaintiff-Appellant,

-against-

R.J. HENDERSON, Superintendent of Auburn Correctional Facility, et al.,

Defendants-Appellees.

----------X

BRIEF ON BEHALF OF DEFENDANTS-APPELLEES

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Arlene R. Silverman, being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for respondent herein. On the 3rd day of Nov, 1975, she served the annexed upon the following named person :

The Legal Aid
Society Prisoner's Rights Project
15 Park Row
NY NY 10038

Attorney in the within entitled appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by ~~them~~ for that purpose.

Arlene R. Silverman

Sworn to before me this 3rd
day of Nov, 1975

Michael P. Sturz
Assistant Attorney General
of the State of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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FRANCIS BLOETH, :

Plaintiff-Appellant, :

-against- : No. 75-2072

R.J. HENDERSON, Superintendent of Auburn Correctional Facility, et al., :

Defendants-Appellees. :

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BRIEF ON BEHALF OF
DEFENDANTS-APPELLEES

Question Presented

Did appellant's complaint in the District Court state a claim for relief where after appellant was placed in a Special Housing Unit for investigation, he received prompt oral and written notice of the charges against him, was afforded a superintendent's proceedings at which he was given an opportunity to explain the charges against him, and was not deprived of any privileges which unreasonably infringed on any recognized constitutional right?

Statement

This is an appeal from an order of the United States District Court for the Northern District of New York (Port, J.), dated November 8, 1974, which dismissed appellant's complaint and supplemental complaint pursuant to 28 U.S.C. §§ 1981-1983 and 28 U.S.C. § 1343 et seq. which sought injunctive relief and monetary damages.*

Facts

Appellant alleges that on September 23, 1974 between the hours of 11 a.m. and 12 noon, he was informed that he was being keeplocked for investigation. On that day, between the hours of noon and 1 p.m., Sergeant LaLonde and two other officers escorted him from his cell to the Special Housing Unit. He claims that no explanation for these actions was given.

Appellant further avers that on September 25, 1974, he was brought before the Adjustment Committee where Sergeant Norris informed him that he had unauthorizedly used institutional stationary and had attempted to defraud a United States District Court Judge by passing himself off as an attorney. He admitted that he had typed the letter in question but alleges he denied any attempt to defraud or infer that he was an attorney.

* The District Court dismissed appellant's complaint and supplemental complaint sua sponte.

On September 25, 1974, appellant wrote to defendant Henderson requesting permission to participate in certain religious services he had been attending on Saturday and Sunday and to continue his participation in certain educational programs in which he was enrolled (Complaint, Exhibit I). On September 26, 1975, defendant Henderson denied appellant's request. He explained that appellant was under investigation for unofficial use of official stationary, that this was a serious matter and that participation in programs within the facility is based on appropriate conduct by inmates (Complaint, Exhibit II).

On September 27, 1974, appellant states that he was served with a copy of the written charge (Complaint, Exhibit III).

On October 1, 1974 appellant appeared before defendant Reynolds at a Superintendent's proceeding on the charge that he had unauthorizedly used prison stationary. The stationary was apparently used for a letter which sought leniency in a federal court proceeding for a fellow inmate. At the conclusion of the hearing, he was sentenced to 30 days in the Special Housing Unit.

Appellant claims that he "was judged guilty by the defendants until proven innocent", that he was denied his constitutional right to attend religious services while in the Special Housing Unit, that he was denied the opportunity to participate in educational and rehabilitative programs and that he was limited in the duration and place of his exercise time.

In a supplemental complaint, appellant alleged that on October 24, 1974, he was called to the Adjustment Committee. Appellant asked why he was being detained in the Special Housing Unit beyond the 30 day period he had received after the Superintendent's proceeding. Sergeant Norris informed him that he would remain in administrative segregation and have a weekly review.

Opinion of the District Court

The District Court reviewed the complaint and held that it failed to disclose any denial of appellant's procedural due process rights. The Court also noted that in so far as apellant claimed, in his supplemental complaint, that he was being held beyond the thirty day term, he had administrative remedies which should be pursued.

ARGUMENT

APPELLANT WAS AFFORDED HIS PROCEDURAL DUE PROCESS RIGHTS UPON HIS CONFINEMENT TO THE SPECIAL HOUSING UNIT.

Although appellant's brief in this Court speculates as to facts never urged in the District Court in an attempt to fashion an appropriate case for relief, bared to its essentials, appellant's sole claims in the District Court, were that by his confinement to the Special Housing Unit, he was "judged by the defendants herein as being guilty until proven innocent in violation of the Fourteenth Amendment" (Complaint, paragraph 18) and that he was deprived of his right to attend religious services (Complaint, paragraphs 19-21), to participate in educational and rehabilitative courses (Complaint, paragraphs 22-25), and to exercise outside of his cell and the cellblock (Complaint, paragraphs 26-29). In his supplemental complaint, appellant sought damages for his confinement in the Special Housing Unit past the 30 day sentence imposed after the Superintendent's proceeding.*

* The brief submitted to this Court argues that appellant did not receive a written decision after the Superintendent's proceeding. Although pro se complaints are to be liberally construed, the District Court was not required to read into the complaint claims which the inmate did not raise nor, for that matter, even imply.

In support of the claim that he was judged by the defendants as being guilty until proven innocent, the complaint recites that appellant was confined to the Special Housing Unit and deprived of certain privileges prior to the Superintendent's proceeding and the determination that he was guilty of the unauthorized use of institutional stationary. However, it has repeatedly been recognized that inmates may suffer a loss of privileges, be keeplocked or confined to a Special Housing Unit prior to a determination of the charges against them as long as they are given written notice of such charges and a reasonably prompt hearing at which the truth of the allegations are ascertained. Such was the case here.

Appellant was confined to the Special Housing Unit on September 23, 1975; two days later he met the Adjustment Committee which orally informed him of the charges against him. On September 26, 1975, Superintendent Henderson explained to appellant in writing the basis for his detention in the Special Housing Unit (Exhibit II). On September 27, 1974, appellant was served with a written formal charge (Exhibit III) and the hearing was held on October 1, 1974. Appellant was thus accorded the panoply of due process procedures to which he was entitled prior to the hearing on October 1, 1974. Appellant's mere claim, without more, that he disagreed with the determination after the Superintendent's proceeding does not raise a constitutional claim. Powell v. Ward, 392 F. Supp. 628, 632 (S.D.N.Y. 1975).

Appellant, additionally contends that he was deprived of his right to participate in religious services. However, it is not at all clear that appellant has even raised a freedom of religion issue since he apparently wished to attend the services of two distinct religions, the Quaker Services and the Christian Scientist Services, expressing a serious interest in such religions and the complaint is utterly baren of any allegation that he, in fact, practiced either religion and that such services formed an integral part of his religious faith Sherbert v. Verner, 374 U.S. 398 (1963). Moreover, under the regulations of the New York State Department of Correctional Services, inmates in the Special Housing Unit may request the services of a minister if they so desire. Appellant fails to allege that he made any such request which was denied. 7 N.Y.C.R.R. 301.6. Appellant was committed to the Special Housing Unit for a disciplinary reason. The complaint makes clear that he regarded such confinement unjust and disagreed with the prison authorities. Under such circumstances, it was constitutionally permissible for prison authorities to deny him access to group religious meetings LaReau v. MacDougall, 473 F. 2d 974 (2d Cir. 1972).

As for appellant's claim that he was deprived of his right to attend educational and rehabilitative programs, his brief in this Court cites no cases which support any such right. As for his exercise claims, appellant was permitted to exercise in accordance with 7 N.Y.C.R.R. 301.5 (b) and (d).* The exercise permitted appellant falls far short of cruel and unusual punishment. Sostre v. McGinnis, 442 F. 2d 178 (2d Cir. 1971), cert denied, 404 U.S. 1049 (1972). Compare LaReau v. MacDougall, supra.

In his supplemental complaint, appellant raised the claim that he was detained in the Special Housing Unit beyond the 30 days sentence. However, this was in accordance with 7 N.Y.C.R.R. 252(e)(3). Under this regulation, the Adjustment Committee could continue an inmate in the Special Housing Unit a week at a time if it found that his return to general population would be a danger to the security of the institution.** In Crooks v. Warne, 416 F. 2d 837 (2d Cir. 1975), this Court recognized that this

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* (b) Except as otherwise provided in this section, every inmate shall be permitted to exercise outside of his cell for at least one hour each day and where weather permits such exercise shall be permitted out of doors.
(d) Inmates confined to their cells or confined in a segregation unit in accordance with action of the adjustment committee or a disposition in a superintendent's proceedings, or while awaiting initial appearance before the adjustment committee, need not be permitted to take a shower or to have an exercise period during the first full five days of such confinement. Where an inmate is confined while awaiting an initial appearance before the adjustment committee, and such confinement is continued by the adjustment committee or by virtue of a disposition in a superintendent's proceeding, the full five day period shall be calculated from commencement of confinement.

** This review has been eliminate from the Rules and Regulations of the New York State Department of Correctional Services. The Adjustment Committee may no longer continue an inmate in the Special Housing Unit unless the Adjustment Committee immediately recommends a Superintendent's proceeding 7 N.Y.C.R.R. 252.5(e)(3).

function of the Adjustment Committee, as opposed to its function in adjudicating inmate infractions does not require the same panoply of due process rights. In any event, appellant was released from the Special Housing Unit on November 1, 1974 and his request for injunctive relief is now moot. Since the members of the Adjustment Committee were acting under a presumptively valid regulation in October, 1974, there is no basis for the award of any damages and appellant's supplemental complaint was properly dismissed.*

CONCLUSION

THE ORDER OF THE DISTRICT COURT
SHOULD BE AFFIRMED.

Dated: New York, New York
November 3, 1975

Respectfully submitted,

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Appellees

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* The supplemental complaint is dated October 29, 1974. Institution files, not in the record on appeal state that appellant was released from the Special Housing Unit on November 1, 1974, 39 days after he was first placed there.